

# Sumter City-County Board of Appeals

August 11, 2010

## BOA-10-19, 236 S. Pike West (City)

### I. THE REQUEST

**Applicant:** Vanett Fore

**Status of the Applicant:** Prospective Tenant

**Request:** A variance from Article 6, Section G: Retrofitting Parking Lots, Buffers and Landscaping; Article 8, Section D: Landscaping Standards and Section J: Parking Regulations in order to operate a new special events venue.

**Location:** 236 S. Pike West

**Present Use/Zoning:** Vacant Restaurant/General Commercial, Highway Corridor Protection District (GC/HCPD)

**Tax Map Reference:** 229-03-02-006

### II. BACKGROUND

The applicant, Vanett Fore, is requesting a variance from the landscaping, buffering and curbing requirements for retrofitting the parking lot on a +/- 1.58 acre commercial property located at 236 S. Pike West, the former Dragon Restaurant.

236 S. Pike West was originally constructed in 1981 and remained in continuous operation as a restaurant until its closing in April of 2007. Because the structure has been vacant for more than six (6) months, under Section 6.e.1, 6.g.1 and 8.d.11 the parking lot, landscaping, and bufferyards must be brought up to current code. In addition, in accordance with Article 8, Section J the site must be retrofitted with concrete curb and gutter. Due to the age of construction, the site is non-conforming with respect to parking lot development standards, landscaping and vegetative bufferyard requirements.



Based on the submitted application, the applicant has requested to use the site just as it is without making any parking lot or landscaping upgrades. The applicant has not submitted plans showing the existing or proposed conditions on-site. The photograph above is how the site currently looks from the S. Pike West frontage.

## *Site Analysis*

Because the site is non-conforming, in order for the site to be brought up to meet current code a site plan and landscaping plan must be submitted and approved by Planning Staff. At minimum that site plan and landscape plan should address the following:

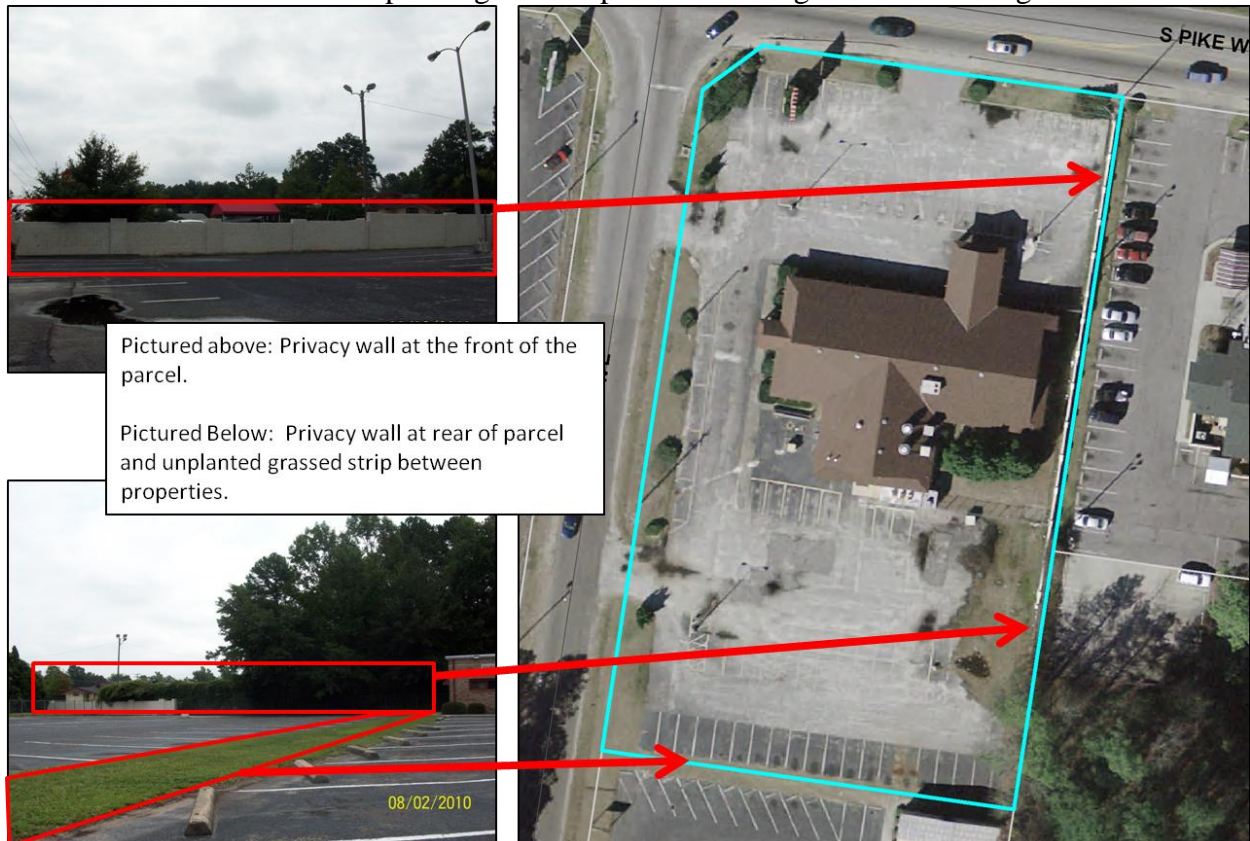
- 10 foot-wide bufferyard located out of the public ROW along Carolina Ave. and S. Pike West which includes a blending of canopy trees, understory trees and evergreen shrubbery;
- 5 foot-wide bufferyard along the interior property line and a 5 foot-wide bufferyard along the rear property line which also includes a blend of canopy trees, understory trees and evergreen shrubbery;
- Integrated tree islands within the parking lot planted with canopy trees;
- Identification of the service area for garbage collection and utilities that is screened and/or fenced to the equivalent of a five-foot bufferyard or privacy fence or some combination of the two;
- Retrofitting of the parking lot with concrete curb and gutter;
- Plantings being used for vegetative screening must be of sufficient size, and planted in such a fashion, that a year-round screen at least six (6) feet in height shall be produced within three (3) growing seasons.
- Deciduous street trees must have straight trunks and be of two-inch (2") caliper at time of planting and must be placed at intervals of forty (40) feet or else shall have smaller understory trees planted in between.

It should be noted that by Ordinance, plantings must be watered regularly by an automatic and timed irrigation system or other acceptable methods of periodic watering.

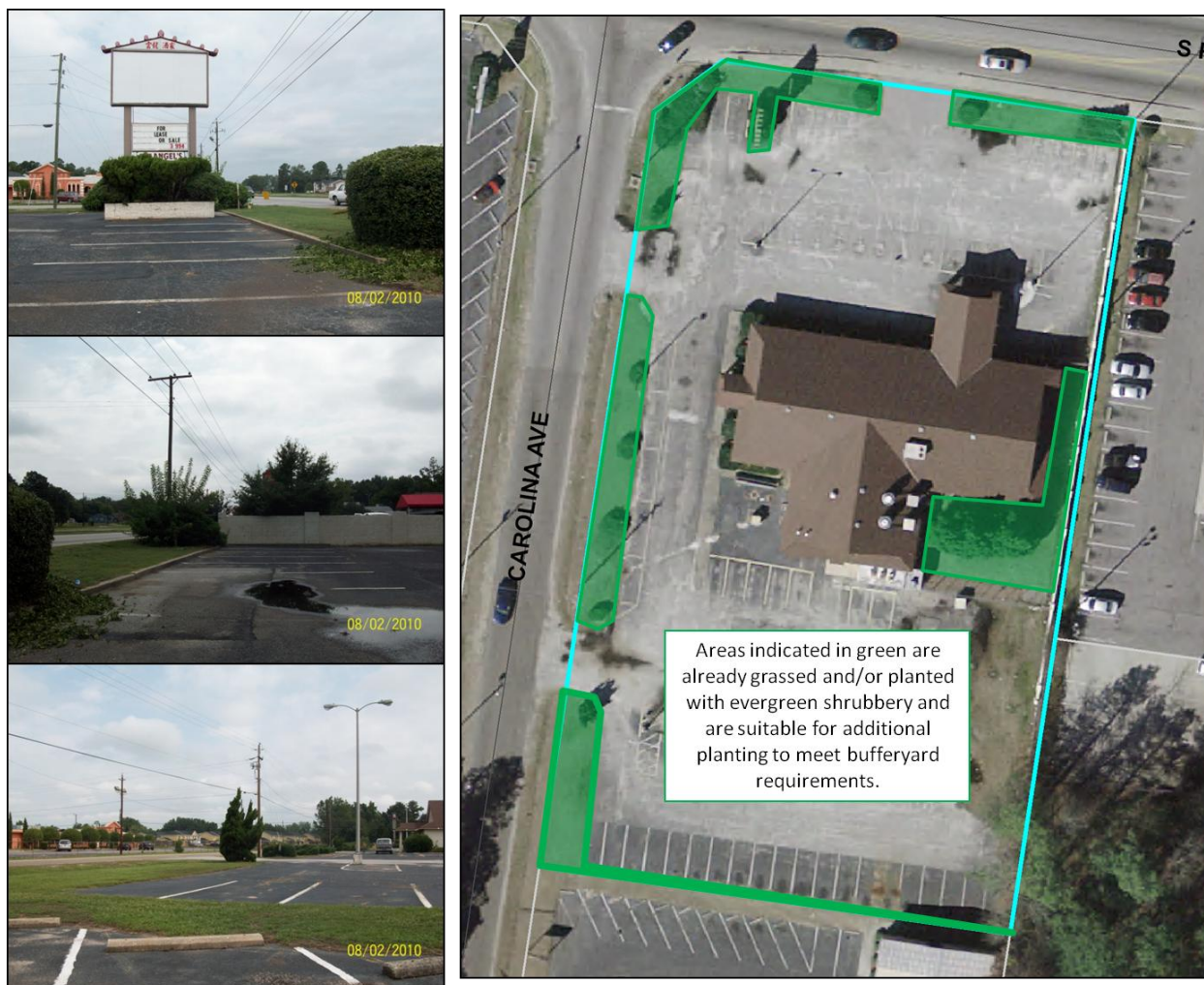
As shown in the graphics and photographs on the following pages, some of the required landscaping retrofitting can be accomplished without changes to the existing parking lot configuration or removal of asphalt.



As shown in the graphics and photographs above, the property currently has some vegetation. Primarily the existing vegetation is evergreen shrubbery. The primary and secondary facades of the structure have foundation plantings within planter boxes against the building.







While both street frontages have some plantings within the required 10 ft. bufferyard, these plantings are primarily evergreen shrubbery. By Ordinance Standards these bufferyards should include a blending of canopy and understory trees in addition to the evergreen shrubbery.

In addition to bringing landscaping into compliance, under the current regulations, In accordance with Section 8.j.3 of the Ordinance, the parking lot must be retrofitted with concrete curb and gutter.

### III. THE REQUEST

The applicant is seeking variances from all required site upgrades including the following: additional plantings within the 10 ft. landscape bufferyards along each street frontage; implementation of 5 ft. landscape bufferyards on the interior and rear property lines, installation of landscaping within the paved parking lot; and installation of concrete curb and gutter.

In order for the Board of Appeals to grant a variance from the Zoning Ordinance, the proposed variance request must meet all four-parts of a State mandated four-part test. When reviewing a variance request, the Board may not grant a variance that would do the following:

- Allow the establishment of a use not otherwise permitted in a zoning district;
- Extend physically a nonconforming use of land;
- Change zoning district boundaries shown on the Sumter City-County Official Zoning Map.

The fact that a property may be utilized more profitably should a variance be granted shall not be considered grounds for approving a variance request.

#### **IV. FOUR-PART TEST**

**1. *There are extraordinary and exceptional conditions pertaining to the particular piece of property.***

There *are* extraordinary and exceptional conditions pertaining to this particular piece of property based on the following:

The property is an existing building that is located in the Highway Design Corridor. The site was developed in the 1980s prior to the current established development regulations, as such, the site is non-conforming with respect to landscaping, bufferyard and curbing standards.

Because the site is covered in concrete and asphalt, clearly the site development is such that installation of concrete curb and gutter along the edge of the established parking lot may significantly alter stormwater management on the site resulting in unintended consequences related to stormwater run-off.

**2. *These conditions do not generally apply to other property in the vicinity.***

These conditions *do* generally apply to other properties in the vicinity based on the following:

Development in the vicinity of the site is predominantly commercial with the parcels to the east and west being used as restaurants. Much of the adjacent commercial development occurred in the late 1970s/early 1980s and were established under similar development standards as the subject parcel.

Based on site visits and review of Orthophotography using the Sumter County GIS, it appears that the adjacent parcels do not meet current bufferyard and parking lot landscaping standards either; however, these locations have remained in continuous operation maintaining their grandfathered non-conforming status.

The applicant contends that the subject property in its current condition is comparable to the other commercial properties in its district, and that requiring the applicant to make the required site enhancements would cause the tenant to bear an undue financial burden. While this may be true, it should be noted that if any of the adjacent businesses sited on grandfathered non-conforming sites close and reopen as the same use or a different use after six (6) months, those sites would also be subject to retrofitting requirements.

**3. *Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.***

Absolute application of the ordinance requirement *will not prohibit* or unreasonably restrict the utilization of this property due to the following:

Parking lot development standards and landscaping are a requirement of the Ordinance and therefore must be complied with. In situations where the property or existing site development conditions clearly prevent compliance with the regulations due to limitations in area, building location, lot width/depth or topography make it physically impossible to meet development standards, then it is reasonable to state that application of the ordinance effectively prohibits or unreasonably restricts utilization of the property.

As shown in the graphic below, in this instance, there are clearly areas where some development standards related to landscaping can be met without granting a variance while there are other areas on the property where the site must be significantly altered in order to comply.



While there is expense involved in making these site development upgrades to comply with the regulations, expense in and of itself should not be considered a hardship.

4. *The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the granting of the variance will not harm the character of the district.*

Allowing a business to operate with no site upgrades does not meet the intent of the Ordinance nor does it serve the public good. While developing this property with some variances from the development standards *will not be* of substantial detriment to adjacent property or to the public good, the intent of the Section 8.j.2.b of the Zoning Ordinance is to remove or eliminate nonconforming parking and implement landscaping standards at structures and sites that do not currently comply with regulations based on new proposed uses or increases in floor area.

## **V. STAFF RECOMMENDATION**

Staff recommends denial of BOA-10-19. Theoretically, sites should be redesigned or retrofitted as directed by the ordinance to meet the current development standards. However, there are occasions when incremental and reasonable improvements to overwhelmingly non-conforming sites better meets the public good than partial or complete vacancy on a parcel.

In this particular instance, the applicant has requested a complete waiver from meeting any of the current development standards. While it may be reasonable to waive the requirement for curb and gutter and even grant variances on bufferyard widths and integrated landscaping within the parking lot, granting a 100% variance from meeting the development standards is not consistent with past actions of the Board. Historically the Board has granted variances from development standards based on true site related hardship and in each of these instances; at bare minimum landscaping upgrades were implemented in areas on the property already suited for implementation.

## **VI. DRAFT MOTIONS for BOA-10-13**

- A. I move that the Sumter Board of Appeals deny BOA-10-19 subject to the findings of fact and conclusions contained in the draft order dated August 11, 2010 attached as Exhibit 1.
- B. I move that the Sumter Board of Appeals approve BOA-10-19 on the following findings of fact and conclusions:



## VII. ZONING BOARD OF APPEALS – August 11, 2010

The Zoning Board of Appeals at its meeting on August 11, 2010 voted to approve the following parts of the variance from Article 6, Section G: Retrofitting Parking Lots, Buffers and Landscaping:

- Variance from requirements for 5' interior side and rear bufferyard
- Variance from installation of curbing and gutter
- Variance from installation of landscaping within the paved parking lot
- Applicant is required to add additional landscaping as proposed by planning staff in the following plan titled “Landscaping Plan-236 S. Pike West” dated August 11, 2010
- Applicant must submit a plan showing proposed dumpster location and screening plan for the dumpster area





**Exhibit 1**  
**Order on Variance Application**  
**Sumter Board of Appeals**

**BOA-10-19, 236 S. Pike West (City)**  
**August 11, 2010**

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Date Filed: August 11, 2010

Permit Case No. BOA-10-19

The Board of Zoning Appeals held a public hearing on Wednesday, August 11, 2010 to consider the request of Vanett Fore, 7726 Wessex Ln., Columbia SC 29223 for a variance from the strict application of the Zoning Ordinance as set forth on the Form 3 affecting the property described on Form 1 filed herein. After consideration of the evidence and arguments presented, the Board makes the following findings of fact and conclusions.

1. The Board concludes that the Applicant ☒ **has** - ☐ **does not have** an unnecessary hardship because there are extraordinary and exceptional conditions pertaining to the particular piece of property based on the following findings of fact:

The property is an existing building that is located in the Highway Design Corridor. The site was developed in the 1980s prior to the current established development regulations, as such, the site is non-conforming with respect to landscaping, bufferyard and curbing standards. Because the site is covered in concrete and asphalt, site development is such that installation of concrete curb and gutter along the edge of the established parking lot may significantly alter stormwater management on the site resulting in unintended consequences related to stormwater run-off.

2. The Board concludes that these conditions ☒ **do** - ☐ **do not** generally apply to other property in the vicinity based on the following findings of fact:

Development in the vicinity of the site is predominantly commercial with the parcels to the east and west being used as restaurants. Much of the adjacent commercial development occurred in the late 1970s/early 1980s and were established under similar development standards as the subject parcel. Based on Planning Staff site visits and review of Orthophotography using the Sumter County GIS, it appears that the adjacent parcels do not meet current bufferyard and parking lot landscaping standards either; however, these locations have remained in continuous operation maintaining their grandfathered non-conforming status. If any of the adjacent businesses sited on grandfathered non-conforming sites close and reopen as the same use or a different use after six (6) months, those sites would also be subject to retrofitting requirements.

3. The Board concludes that because of these conditions, the application of the ordinance to the particular piece of property ☐would - ☒would not effectively prohibit or unreasonable restrict the utilization of the property based on the following findings of fact:

Parking lot development standards and landscaping are a requirement of the Ordinance and therefore must be complied with. In situations where the property or existing site development conditions clearly prevent compliance with the regulations due to limitations in area, building location, lot width/depth or topography make it physically impossible to meet development standards, then it is reasonable to state that application of the ordinance effectively prohibits or unreasonably restricts utilization of the property.

As shown in the following graphic below, there are clearly areas where some development standards related to landscaping can be met without granting a variance.



4. The Board concludes that authorization of the variance ☒will – ☐will not be of substantial detriment to adjacent property or to the public good, and the character of the district ☒will - ☐will not be harmed by the granting of the variance based on the following findings of fact:

Allowing a business to operate with no site upgrades does not meet the intent of the Ordinance nor does it serve the public good. While developing this property with some variances from the development standards *would not be* of substantial detriment to adjacent property or to the public good, the intent of the Section 8.j.2.b of the Zoning Ordinance is to remove or eliminate non-conforming parking and implement landscaping standards at structures and sites that do not currently comply with regulations based on new proposed uses or increases in floor area.

THE BOARD, THEREFORE, ORDERS that the variance is ☐ DENIED – ☒GRANTED, subject to the following conditions:

## VII. ZONING BOARD OF APPEALS – August 11, 2010

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Approved by the Board by majority vote.

Date issued: \_\_\_\_\_

\_\_\_\_\_  
Chairman

Date mailed to parties in interest: \_\_\_\_\_

\_\_\_\_\_  
Secretary

**Notice of appeal to Circuit Court must be filed within 30 days after date this Order was mailed.**